

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 363 OF 2005

Kailas Namdeo Saste. ... Appellant.
Versus.
Smt.Sangita Vilas Saste & ors. ... Respondents.

Shri P.J.Thorat i/by Shri R.A.Thorat for the Appellant.

CORAM : ABHAY S. OKA, J.

DATED : 6th April, 2005.

P.C.:

1. Heard the learned Counsel appearing for the Appellant. The Appellant is the original Plaintiff. The suit is filed by the Appellant for declaration and injunction. The case of the Appellant/Plaintiff is that on 3rd December 1991 he purchased the suit property for valuable consideration in the name of his brother (since deceased). Thus the case made out in the plaint was of a benami transaction.

2. The learned Counsel for the Appellant submitted that the prohibition of the Benami Transaction (Prohibition) Act, 1988 will not apply as the case clearly falls within the exception created by sub-section (3)(b) of section 4 of the said Act of 1988.

3. The Appellate Court examined the said contention and has held that in the plaint no case was made out by the Appellant/Plaintiff that the brother of the

Appellant/Plaintiff was holding the property as a Trustee or that he was holding the property in a fiduciary capacity. As there was no pleading for bringing the case of the Appellant within the scope of exception carved out by sub-section (3)(b) of section 4 of the said Act of 1988, the case of the Appellant has not been accepted by the Courts below.

4. I find no error in the approach of the Courts below.

5. The learned Counsel for the Appellant submitted that as the Appellant was not in possession of the suit property, the decree for injunction ought to have been passed by the trial Court.

6. The suit filed by the Appellant was for declaration of exclusive ownership. After having failed to establish any right, title and interest in respect of the suit property the Appellant was not entitled to the consequential relief of perpetual injunction.

7. No substantial question of law arises. The Second Appeal is dismissed with no order as to costs.

Judge.